IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2750 of 2000
with
SPECIAL CIVIL APPLICATION NO. 2751 OF 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAKESH KUMAR SINGH

Versus

GUJARAT UNIVERSITY THROUGH REGISTRAR

Appearance:
MR AJ YAGNIK for Petitioners
MR. N.V. ANJARIA WITH MR. MITTAL K. SHELAT for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 17/04/2000

COMMON ORAL JUDGEMENT

Rule. Service of rule is waived by Mr. Mittal

K. Shelat on behalf of respondent No. 1.

These two petitions raise identical and common questions and therefore upon request, they are being disposed of by this common judgement.

Whether the following condition inserted in the eligibility certificate issued by the respondent No. 1 Gujarat University to the petitioners, after clause (2) is an impediment in appearing for the MBBS examination if the attendance criteria is satisfied?

"The certificate is subject to the condition that the candidate shall be eligible to appear at the First MBBS Examination after 12 months after securing admission to First MBBS."

The aforesaid condition is being inserted in provisional eligibility certificate, as well as, in the final eligibility certificate which is not in controversy. The petitioners have stated that the academic session for First MBBS commences from 15th June and admission to MBBS course will take place after the result of Higher Secondary Certificate Examinations are announced by various Boards which process takes some time, ordinarily between two and three months. The break-up of the two Sessions of the academic year is from 15th June to 15th November and 15th November to 15th June. Ordinarily, therefore, the process of seeking admission in an academic session is delayed on account of result of feeder course. Therefore, no student would be able to seek admission in an academic session and complete 12 months of period prior to 15th June next year, and the examinations are held prior to that date.

In short, it is not in controversy, that no student would be able to complete 12 months period after the admission is granted before the commencement of the academic session. The rationale behind insertion of such condition appears to be to ensure that requisite attendance criteria is satisfied. The condition which is under consideration in this petition was also under challenge in two earlier petitions being Special Civil Application No. 6484 of 1996, decided on, 7.10.1996 (Coram: M.S. Parikh, J) and Special Civil Application No. 2428 of 1998 decided on 6.5.1998 (Coram: R. Balia, J).

It was held by this court in Spl. C.A. No. 6484 of 1996 and also in subsequent petition that such condition inserted in the eligibility certificate shall

not be implemented and the petitioners shall not be prevented from appearing in the examination subject to fulfillment of the requisite criteria for attendance.

After having considered the facts of both these petitions and the relevant Ordinance, the ratio propounded in two earlier decisions is squarely attracted. Therefore, both these petitions are covered by the earlier decisions. In fact, in the first petition reliance is placed on a decision in case of "Rohan R. Chauhan Vs. State of Gujarat & Ors." reported in 1996(1) G.L.H. 926. Despite the fact that this court has categorically held that such condition in the eligibility certificate to be issued by the University is not to be implemented, it is not understood as to why and how similar condition is being inserted in other such cases. Therefore, the learned advocate appearing for the University rightly said that the attention of the University would be drawn so as to obviate avoidable legal battle and stress on the part of the students. This court also hopes that respondent No. 1 University shall take necessary action to see that such incident is not repeated or recurred.

In the result, the condition imposed in the eligibility certificate in the case of the petitioners in both these petitions shall be ignored subject to fulfillment of attendance criteria prescribed by the University to be certified by the concerned College. Both the petitions are allowed. The respondents are directed to permit the petitioners to appear in the preliminary as well as in the final examination ignoring the condition incorporated in the eligibility certificate, provided the attendance criteria is fulfilled. Rule is made absolute in each petition. No order as to costs. Direct service is permitted.

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